

**PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND) ACT
1997**

WRITTEN SUBMISSION

BY

HISTORIC SCOTLAND

into an application for

LISTED BUILDING CONSENT

for

**DEMOLITION OF THE AUDITORIUM OF THE B-LISTED BUILDING FORMER ODEON
CINEMA AT 7 CLERK STREET, EDINBURGH**

HS Ref: HGG/A/LA/1169 pt 4 & 5

The Proposal

1. Listed building consent is sought for the partial demolition of the B-listed former Odeon Cinema in Clerk Street, Edinburgh and the erection of a hotel with associated bar, restaurant and artists' studio space.
2. The Scottish Ministers exercised their powers under section 11(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and directed that the application be referred to them for determination.

The Site

3. The former Odeon Cinema is situated on Clerk Street, a major route into Edinburgh primarily lined by four storey tenements with retail uses at ground floor. The building occupies a relatively narrow plot to Clerk Street, with the main bulk of the building in the back court area surrounded by tenement housing. Its blank rear elevation faces Buccleuch Street. A site plan is provided as Annex 1 with photographs as Annex 2.
4. The building was listed at Category B in 1974 and lies within the South Side Conservation Area, just south of the boundary of the Edinburgh World Heritage site. A copy of the list description is attached at Annex 3. Prior to the submission of the current application the building had been reassessed as being of national importance and therefore worthy of inclusion on the list at Category A. As we generally do not list or upgrade when there is a live application the upgrade has been put in abeyance pending determination of this application. Out of 51 listed cinemas in Scotland only five are currently Category A listed. A draft updated list description is included at Annex 4.
5. The building was designed in 1929 by William E Trent one of the leading cinema designers of the period. It is a rare example of an atmospheric cinema with the auditorium designed to give the impression of sitting outside, in this case within a classical amphitheatre. The building was designed in a period of transitional change from classical to Art Deco styles. A detailed statement outlining the building's significance is included as Annex 5.

Legislative and Policy Context

6. The application was considered by the City of Edinburgh Council under the policy tests set out in NPPG18 (1999) and the Memorandum of Guidance on listed buildings and conservation areas (1998). At the time of their committee decision the national policy had very recently changed with NPPG18 being superseded by SPP23, Planning and the Historic Environment, while the policy as set out in the Memorandum was superseded by the Scottish Historic Environment Policy (SHEP). However we believe the two documents offer no material changes of policy, rather a clarification of the tests.

Primary legislation

7. Section 14(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that,

“...in considering whether to grant listed building consent for any works, the planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

Legislative context used in Council's consideration

8. In considering applications for the demolition of a listed building, NPPG18 stated that;

In all cases of demolition prior consideration should be given to the scope for recycling buildings which have clear historic or architectural significance. With respect to the demolition (meaning total or substantial destruction) of listed buildings, it is Government policy that no such building should be lost to our environment unless it is demonstrated beyond reasonable doubt that every effort has been exerted by all concerned to find practical ways of keeping them. Ultimately however, consideration of applications for the demolition of a listed building should be based upon the;

- importance of the building,*
- condition of the building*
- the adequacy of efforts made to retain the building in use*
- the extent to which the community would benefit from redevelopment.*

All applications for the demolition of a listed building will need to be supported by a report on the condition of the building along with a feasibility study which explores the viability of retaining the building in active use. Any proposed replacement of a demolished listed building should be of comparable quality in terms of its construction and design. In order to establish this, details of the proposed scheme of redevelopment will require to be submitted to the planning authority and the associated applications for planning and listed building consent considered together. The main source of guidance on Government policy in operating control over demolition works to listed buildings is contained within paragraphs 2.10-2.14 of the Memorandum.

9. The Memorandum of Guidance stated that,

DEMOLITION

2.10 Government policy with regard to the demolition of listed buildings is that no worthwhile building should be lost to our environment unless it is demonstrated beyond reasonable doubt that every effort has been exerted by all concerned to find practical ways of keeping it. The continuing erosion of the national heritage, very often as the result of neglect, is still a matter for concern and planning authorities are urged, in considering applications for consent to demolish, to presume in favour of the preservation of listed buildings except where a strong

case can be made out for demolition after full consideration of the following factors:

IMPORTANCE

a. a building's importance both in itself and in its contribution to the local scene, particularly in conservation areas. In some cases a building may be important because there are only a few of its type in the vicinity, while in other cases its importance may be enhanced because it forms part of a group or series. A building may also be a rarity in national terms. In assessing the importance of a building, attention should be paid not only to its architectural merit but also to its historic interest. This includes not only historic associations but also light thrown by the design, plan, materials or location of a building on the character of a past age, or on the development of a particular skill or technology.

CONDITION

b. a building's condition, the cost of repairing and maintaining it in relation to its importance, and whether it has already received or been promised grants from public funds. In estimating cost, however, due regard should be paid to the economic value of a building when repaired, and to any saving from not having to provide alternative accommodation in a new building. While most old buildings suffer from some defects it is important to distinguish between serious structural faults and less serious but frequently more obvious consequences of poor maintenance, neglect or vandalism

ALTERNATIVE USES

c. the importance in economic or social terms of putting the site upon which the existing building stands to an alternative use. In such instances, it will be necessary to show beyond doubt that it is not possible to adapt the existing building to accommodate any new use, or mix of uses, which would safeguard its future and benefit the community, and that the proposed new use and the building accommodating that use would positively enhance both the environment and the setting of other listed buildings in the area.

Current legislative context

10. In considering applications for the demolition of a listed building, SPP23 states that,

Scottish Ministers' policies on listed building consent and on the considerations to be taken account by planning authorities in determining listed building consent applications for alteration, adaptation or demolition of a listed building are set out in the current SHEP.

A model policy is contained in the appendix, which equates to the SHEP advice below.

11. Paragraph 3.52 of the SHEP states that

'It is Scottish Ministers' policy that no listed building should be demolished unless it can be clearly demonstrated that every effort has been made to retain it.

Planning authorities should only approve applications for demolition where they are satisfied that;

- a. the building is not of special interest; or*
- b. the building is incapable of repair; or*
- c. the demolition of the building is essential to delivering significant benefits to economic growth or the wider community; or*
- d. the repair of the building is not economically viable and that it has been marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable period.'*

Local Policy

12. The Council's Local Plan policy, CD2 (Listed Buildings), states that

'proposals affecting a listed building ... will be considered for their effect on its character and if appropriate their contribution to its care and restoration. Alterations, extensions or changes of use...will not be allowed if likely to diminish the architectural integrity of the building or its historic interest'.

13. Policy ENV1 in the Finalised Edinburgh City Local Plan (Listed Buildings – Demolition) states that,

'Proposals for the total or substantial demolition of a listed building will only be supported in exceptional circumstances, taking into account;

- a) the condition of the building and the cost of repairing and maintaining it in relation to its importance and to the value to be derived from its continued use*
- b) the adequacy of efforts made to retain the building in, or adapt it to a use that will safeguard its future, including the offer of the building for sale or long lease to a restoring purchaser on the open market at a price reflecting its condition*
- c) the merits of alternative proposals for the site and whether the public benefits to be derived from allowing demolition outweigh the loss.*

The City Council's Assessment

14. The application for planning permission and listed building consent was submitted by DHP in January 2008 and was considered by Edinburgh City Council's Development Management Sub-Committee of the Planning Committee on 29 October 2008. The officer report to committee recommended that consent be granted subject to conditions, including referral to the Scottish Ministers, access for recording by the RCAHMS, and a photographic and salvage survey of the building.
15. In considering the application the Council assessed the justification for the proposed demolition of the auditorium, drawing attention to National Planning Policy Guidelines (NPPG 18), Lothian Structure Plan Policy, Central Edinburgh Plan Policy and the Finalised Edinburgh City Local Plan Policy. It also referred to the Memorandum of Guidance on Listed Buildings.

16. Although the sole decision of the Council, in pre-application discussions, it was agreed by the Council, the applicant and Historic Scotland that as the proposals involved the demolition of the auditorium, a substantial and important part of the listed building, the tests for demolition, rather than alteration, of a listed building would apply, and that this was therefore the route that the applicants have followed in their application and the council in determining the application.

17. Historic Scotland responded to the City's consultation in April 2008. Our letter concluded that:

'To summarise, we do not believe that the current proposals represent an acceptable conservation solution for the building. Indeed the loss of the principal space will significantly erode its special interest. It remains possible, however, that this level of intervention is the minimum necessary to prevent the building being lost altogether but up until now we have not seen any information which demonstrates this clearly.'

18. The Theatres Trust also objected to the application for partial demolition stating that:

'the Council should not be allowing the partial demolition of this important listed building for short-term gain. The New Victoria is one of Edinburgh's cultural and architectural assets and one of the UK's finest 'atmospheric cinemas'. We are surprised that the Council are not ensuring that the building is retained as an important part of the town's cultural and social history.'

19. We note though that the proposals also have support including the Chamber of Commerce, the Edinburgh School of Art, Visit Scotland and the Cockburn Society.

20. To assist the Council in their consideration of the case they commissioned Montagu Evans to provide an 'overview of all information currently available from the Council, the owners, DHP Ltd. and their agents GVA Grimley'. This was to have been followed up by an 'independent professional assessment on the future financial economic viability of the building... to establish if there are any practical ways of keeping it'. Importantly, only the first stage of this brief was carried out, with only a review, mainly economic, of information provided by the above named parties being undertaken, rather than an independent examination of all aspects and opinions on the case, including the likelihood of alternative uses. Montagu Evans conclude by stating 'We are of the view that, on balance, the design proposals by Make Architects for the sympathetic redevelopment of the Odeon Cinema is to our mind the most economically viable solution for what is a challenging site'. However, the policy framework for the demolition of listed buildings does not seek the 'most economically viable' scheme, but rather seeks a viable scheme that allows the retention of the asset.

Other Factors

21. The proposals have generated significant interest in the press and more generally with strong views expressed from a range of organizations and individuals both in support of and against the proposals. Since determination of the application by the Council the debate has continued and has included a petition against the proposals organized by a newly emerged body called New Victoria (with over 5,300 signatures before the call-in). There has been correspondence from City of Edinburgh councilors and an open letter from Constituency MSP for Edinburgh Central, Sarah Boyack, and other MSPs asking that the application be called in by Scottish Ministers for their own determination.

Assessment of proposals in line with demolition tests

22. As the case was considered using policy tests that were replaced in the same month as the Committee Report was presented, we will address both sets of documents. Both NPPG18 and the Memorandum and the more recent SPP23 and the SHEP state a presumption that no listed building should be lost unless it can be clearly demonstrated that every effort has been made to retain it.

Legislative context used in Council's consideration

23. Dealing first with NPPG18, this policy states that the main source of Government policy on the control of demolition of listed buildings is contained within the relevant part of the Memorandum. However it also stated that when dealing with listed buildings the best viable use should be compatible with the fabric, setting and character of the historic environment, as well as, importantly, not necessarily being the most profitable use. It also addresses the adequacy of efforts made to retain a building in use.

First memorandum test – Importance

24. The first test in the Memorandum concerns the importance of the building concerned. In practice if a building is of 'importance', and this is generally assumed by its correct inclusion on the statutory list, then its demolition under this test should not be allowed without strong justification. Our recent reassessment judges the building to be worthy of Category A listing, and therefore of national importance. This assessment is generally agreed by the Council and the applicants. The Council, in their Committee Report of 29 October 2008, state that the building is 'culturally significant through its original use as a cinema and architecturally significant as an example of Trent's work and as only one of two remaining 'atmospheric' cinemas in the country' They also state that there is 'no justification for the loss of a substantial part of the building as the building's intrinsic architectural merit and contribution to the local scene remain in terms of importance'.
- The applicants appear to rely on the findings of the Conservation Plan prepared for them by Simpson & Brown in September 2007. In their document of 30 March 2009, prepared in response to our consultants Drivers Jonas report, GVA Grimley on behalf of DHP note on page 3 that 'DHP commissioned acknowledged conservation specialist architects Simpson & Brown, to carry out a

detailed conservation report and plan, the content of which has never been questioned' and 'in any case the significance or condition of the building is not being contested'. It should be noted that Simpson and Brown concluded that the cinema was a 'rare example of an atmospheric style of cinema in Scotland and Britain to the design of a prominent English cinema architect'. It noted in its grading of significance that the front façade to Clerk Street, its streetscape presence and the auditorium were of considerable significance, judged by them to be of regional importance (Scotland) or national importance (Britain). Additionally, Simpson & Brown recommended that there should be a 'presumption against the loss of significant fabric' and that the auditorium should be 'retained, conserved and restored'.

Second Memorandum Test - Condition

25. The second test in the Memorandum concerns the condition of the building. The Council Committee Report of 29 October 2008 notes that 'there is no justification for the loss of the building on grounds of condition. Indeed the building is in sound condition and could be reused'. DHP again rely on the Conservation Plan prepared by Simpson & Brown which notes the building as being 'in fairly good condition'. As above GVA Grimley note that the 'condition of the building is not being contested' and that DHP are not claiming 'that the building is beyond repair'. The test also mentions the cost of repairing the building in relation to its importance, but this is not an issue that has been raised by DHP or their agents.

Third memorandum test – Alternative Uses

26. The third test in the Memorandum stated the 'importance in economic or social terms of putting the site upon which the existing building stands to an alternative use', but this does not stand alone. In order to justify demolition under this test it is 'necessary to show beyond doubt that it is not possible to adapt the existing building concerned to accommodate any new use or mix of uses' beforehand. In essence, this requires the applicant to ensure that every effort has been made to find a suitable alternative use which would include advertising the building to a 'restoring purchaser on the open market for a reasonable period and at a price reflecting its location and condition without success' The latter section on marketing is contained in Para 2.13. We will address this more fully below under the fourth SHEP test.

Current legislative context

27. SPP23 directs detailed policies to the SHEP.

First SHEP test – Importance

28. As above, the building is generally accepted to be of national importance.

Second SHEP test

29. This test now simply states that a building must be incapable of repair for its demolition to be successfully argued on grounds of condition. As above, as the building is in reasonable repair, thus this has not been raised as an issue by DHP or their agents.

Third SHEP test

30. The third test in the SHEP concerns benefits to economic growth and the wider community. Often this test relates to major infrastructure projects and in practice, the applicant would have to prove that significant benefits to economic growth or the wider community could not be realized without the demolition of the building. GVA Grimley in their report of 30th March 2009 state that the proposals would 'also provide economic and community benefits' but focus their detailed responses on the economic and valuation arguments. Later in the same document GVA Grimley state 'DHP would not disagree that there could have been significant social benefits to the wider community' from one of the offers received. This would suggest that this is not the test in which the applicants have argued demolition of the auditorium. In any case our consultants believe that the applicants have failed to provide robust evidence to demonstrate beyond doubt that there are no other uses for the building which could provide similar or greater benefits whilst retaining the auditorium.

Fourth SHEP

31. The fourth test in the SHEP, which addresses the alternative uses possible by restoring purchasers by way of marketing, is the test that it appears the applicants have used to justify the demolition of the auditorium. We would like to address this in greater detail below. However, the fourth SHEP test also adds the 'economic viability of repairs' to the Memorandum's marketing test. It has already been acknowledged that the building is in 'fairly good condition' and nowhere has it been argued that its repair would present particular difficulties. However, in this test the 'economic viability' of repair is tied in to its reuse by a potential restoring purchaser. It would follow that if the repair of the building was economically unviable there would not have been several significant offers received for the building, so we can discount this part of the test and concentrate on the results of the marketing of the building for a new use.

Consideration of the alternative uses test

32. We identified the issue of what in this instance can be considered 'a price reflecting its location and condition to potential restoring purchasers' as a key consideration in this case. To help us consider the Council's assessment we commissioned our own expert assessment from Drivers Jonas. They concluded that the demolition of the auditorium was not justified. They reached this view on the basis that one of the expressions of interest made during the marketing exercise in 2007 (that from the Rock Elim Church who bid £1.8m) was reasonable and that;

'the applicant has failed to provide robust evidence to demonstrate, beyond doubt, there are no other uses that could offer similar or greater economic or social benefits while retaining the auditorium and avoiding its demolition.'

Given this view, we made a copy of this report available to the applicants and to the Council and sought their views on the report and its conclusions. The Council did not respond in any detail but GVA Grimley prepared a report on behalf of the applicants (30 March 2009) setting out in detail the approach adopted by the applicant in seeking to meet the marketing test and challenging the views of Drivers Jonas both in terms of the valuation of the site and in terms of the level of consideration given to the Rock Elim bid. They conclude that 'the building has been properly marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable period and has not elicited any credible offers from parties. Accordingly, a clear and compelling case remains that the proposed partial demolition can be supported on the basis of having been fully justified against relevant listed building policy.' However, we do not believe this conclusion to be correct.

33. It is clear that a key consideration in this case rests on whether the decisions made by DHP in relation to this case meet the policy test relating to alternative uses. It is also clear to us that there are significantly different views about whether the test has been applied correctly.

34. We therefore sought the advice of the Scottish Government's Principal Estates Surveyor (SGPES) who has assessed the case and provided a report. The report raises a significant number of questions about both the purpose and the basis of the valuation of the Odeon upon which DHP appears to have relied when making decisions. In relation to the policy test set out in NPPG 18 and the Memorandum and used by the Council to assess the application, the SGPES concludes:

'having read the various documents listed above, I am left with a number of queries (as outlined in my report) and I am not satisfied beyond reasonable doubt that every effort has been exerted by all concerned to find practical ways of keeping the building'.

Looking at the application under the SHEP tests the SGPES also finds an inadequate justification for the demolition of the auditorium.

Further consideration of the valuation of the building in its current form

35. In order to establish the baseline for DHP's expectations of a reasonable price to obtain for this property, our advisers sought to establish the market value of the property at the time of acquisition. However, there has not been any valuation submitted, prepared for DHP at the time of their acquisition of the property, which gives this information. It is known that DHP paid £4.5 million for two properties (this and the former Odeon Cinema in Renfield Street, Glasgow) but we have not seen any contemporaneous valuation which shows how the price was to be apportioned between the properties. We have been advised that for the purposes of registering the property in the Registers of Scotland, this property was assigned a value of £1.5 million. However, in their advice to the Council,

Montagu Evans state that this was a notional value and continue 'Within this context we would advise that an independent market valuation of the Edinburgh site was prepared by Messrs. Colliers CRE at £2.3m as at 11 April 2003.' However, this was a valuation for bank lending purposes prepared by ColliersCRE for the Royal Bank of Scotland (RBS).

This document appears to form the basis of DHP's analysis of the building's value, and a letter from RBS dated 10 December 2007 was used as a supporting document in the application. (we received a copy of the full valuation in April 2008).

36. Both our consultants and the SGPEs have concerns over the purpose, use and importantly, the assumptions and findings of this report.
37. The 2003 valuation report, prepared for RBS, highlights a number of issues:
 - that the building may have a market value of £2.3M if a marketing period of 18 months were allowed, and £1.8M if this period was six months.
 - That during the period of the loan facility both rental and capital value would remain static.
 - The report notes that the frontage and foyer are Category B listed, but does not refer to the proscenium and auditorium, which are also listed. The valuation report appears to offer strong scope for redevelopment of the parts not noted as listed, which include the auditorium.
38. Our consultants also raise concerns about the rental and yield methodology used to obtain leasehold values. They believe that the figures suggested would be hard to achieve for a traditional cinema layout (deemed obsolete for that use by the Odeon chain) with the constraints of a listed building, and conform better to values for a 'modern leisure box'.
39. Therefore, our consultants and the SGPEs both believe that the Colliers CRE (2003) valuation of £2.3M cannot be relied upon as a capital valuation of the listed building in its current, unaltered form for disposal purposes, or as a secure basis for leasehold valuations.
40. Notwithstanding the concerns expressed, if we accept that this document forms the basis of DHP's valuation of the building, and there would appear to be no other, then their aspirations of its value are underpinned by its scope for redevelopment, rather than its valuation as a listed building, in which policy tests presume against demolition. This unrealistic assumption on the basis of its value has led to a figure being sought which no-one in the market has been so far been prepared to meet.
41. As there appears to be no valuation of the listed building in its current form, without scope for redevelopment dating either from the acquisition of the building by DHP or at the end of the most recent marketing exercise, then the rejection of offers from restoring purchasers as being too low does not seem either reasonable or justified.
Additionally, in their report of 30 March GVA Grimley concede that 'given the time lapse (the 2003 report) is no longer material in establishing a current economic

case for demolition, it then introduces, as supporting evidence, an updated version (Dec 2008), again by ColliersCRE for lending purposes on behalf of RBS. This further suggests that the 2003 valuation had served as the basis for DHP's consideration of value until then.

However, after being made aware that the most recent report was being used for this purpose ColliersCRE wrote to us stating that the purpose of the report was to 'assist the Royal Bank of Scotland in assessing the level of security provided by the property while considering a loan to Duddingston House Properties'. They then asked us to remove the document from our files and destroy it, which we did. This serves to cast further doubt on the appropriateness of the reliance on the 2003 valuation by Colliers CRE which had been prepared for that purpose.

Analysis of the viability of offers in the recent marketing exercise

42. Alongside the rejection of offers on price alone, the viability or credibility of offers made from 'restoring purchasers' to purchase the building has also formed part of the consideration.

The applicants and the Council state that despite extensive marketing, no viable offers for alternative uses from restoring purchasers have been received for the building in its current state, and that this justifies the demolition of the auditorium. However, it is known that several offers were made to lease and to purchase the building from restoring purchasers over the last five or so years, though all but two of these (£4M and £3.4M) were rejected by DHP.

These offers were as follows;

Mid 2004	
Elim Trust Corporation of Cheltenham	£1,500,000 (in the region of)
September 2006	
The Consortium (Clara Ventures Ltd.)	£2,600,000
Increased in October 2006 to;	£3,000,000
and in November 2006 to;	£3,150,000
November 2006	
The Consortium	£3,400,000
Reduced afterwards following survey to	£2,750,000
September 2007	
<i>Purchase</i>	
Encounter International (USA)	\$23,152.98
Elim Trust Corporation of Cheltenham	£1,800,000
The Consortium (ENSCO 165 Ltd.)	£2,800,000
Taylor Bradshaw (Fat Cat Productions Ltd.)	£4,000,000
<i>Leasehold</i>	
Barracuda Pubs & Bars Ltd.	£95,000pa
Rex Cinemas, Berkhamsted	£100,000pa

The 2006 offer of £3.4M by the Consortium was accepted by DHP, but when after survey it was reduced to £2.75M it was rejected. In 2007 the £4M offer by

Fat Cat Productions did not result in a sale as the potential purchaser could not conclude missives.

43. The remaining offers were rejected by the owner on the basis that they fell below the value assigned (by themselves) to the building. However, according to the Council's Valuation Exercise of December 2006 the quoted price for offers for the building had risen by over 100% from offers over £1.4M in Jan 2004 to £3.0 to £3.5M in Oct/Nov 2006. Such a rise in the expected price achievable for the building runs counter to the advice given in the Colliers CRE report.
44. In GVA Grimley's report of 30 April 2009 they conclude that 'the building has been properly marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable period and has not elicited any credible offers from parties'. [my emphasis]
If it is accepted that the second placed bid of £2.8M from ENSCO 165 Ltd. (The Consortium) is invalid or not viable due to the failure to reveal their proposals, (although they were planning a restoration of the cinema use) then the £1.8M bid by the Rock Elim Trust should have been considered next.
45. Our consultants and the SGPES both believe there has been no reasoned consideration of the offer by the Rock Elim Trust, which appears to have been rejected on price alone, as it was below the valuation prepared by Colliers CRE in 2003.
As part of their report for the Council, Montagu Evans stated that the bid of £1.8M from the Rock Elim church was 'considered too low which we do not consider unreasonable in the light of the purchase price and holding costs accrued by DHP in the building to date. It is difficult to see how the proposed use would generate enough income to properly maintain the building'.
46. This raises a number of points:
 - The purchase price is presumably unknown, having been included within the £4.5M paid for both the Glasgow and Edinburgh buildings (although £1.5M was afterwards allocated to the Edinburgh building).
 - As DHP purchased the building within the same legislative framework as regards listed buildings as were in place when their application to demolish was considered, it is expected that the purchase was made in full knowledge of the constraints of a listed building, and the holding costs associated with it. We do not believe these are relevant considerations in addressing its demolition. It is not the purpose of the policy framework to allow demolition simply because an owner may have overpaid for the building, accrued excessive holding costs or anticipated an uplift in value from demolition and redevelopment that its listed status would not presume.
 - Montagu Evans' doubts over the church's ability to maintain the building are not supported by any evidence or analysis of the church's accounts, business plans, etc., and in any case many listed churches survive adequately with widely differing financial agreements. From documents submitted by the Rock Elim church, it is clear their bid was supported by evidence of recent accounts and an independent valuation undertaken for them by DM Hall in August 2004.
 - In a separate part of their report, we note that in their evaluation of other possible uses for the building, including bingo, student accommodation and cinema use,

Montagu Evans do not consider ecclesiastical use, despite Elim's longstanding and continued interest in the building since 2004. Although perhaps not a mainstream, nor commercial, use for a building two other former cinemas of similar date have recently been reused as churches in Edinburgh (The Destiny Churches in Casselbank Street, Leith and Gorgie Road, Gorgie). As a use that avoids potentially difficult issues e.g. late licensing, we would have reasonably expected it to be addressed in their findings.

47. Our consultants Drivers Jonas consider that the bid of £1.8M from the Rock Elim Trust was 'reasonable and realistic' being based on the achievable uses for the listed building in its current state rather than on the hope of other more profitable uses, e.g. a late licensed venue or uses requiring redevelopment. We would thus argue that it was therefore 'a price reflecting its location and condition' from a restoring purchaser that should have been properly considered.
48. Drivers Jonas also mention the leasehold figures as being too high, which could conceivably bring into consideration the two c£100K offers to reuse the building, one as a cinema, which have also been dismissed on price grounds.
49. This consideration of the Rock Elim offer and other offers for the building should be viewed beside the Scottish Ministers' clearly stated policy that no listed building should be demolished unless it can be clearly demonstrated that every effort has been made to retain it. In this case, to reject a seemingly credible offer from a restoring purchaser on price alone would strongly suggest every effort has plainly not been made to retain the auditorium.

Summary

50. It is generally agreed that the former Odeon building is of significant national importance in terms of its architectural and historic merit, and that the building is in a reasonable state of repair. It is also generally recognized that the current proposals will have a significant and adverse effect on the merit of the building.
51. The applicants and the Council believe that, despite extensive marketing, no alternative uses exist for the building in its current form, and that therefore the proposals meet the policy tests for demolition.
52. The proposals have been assessed by us in the light of the relevant national and local policy. The key test is whether the substantial demolition of the building is necessary because the building is incapable of continued use in its current form. This test relies on the applicant demonstrating that the building is incapable of viable repair or re-use in its current form, and that it has been marketed to a restoring purchaser at a price reflecting its location and condition (without success).
53. Our consultants, Drivers Jonas, and the Scottish Government's Principal Estates Surveyor have concerns over the use of the valuation report which appears to form the basis of the justification for decisions made by DHP when rejecting offers, and the lack of clarity in how such decisions have been reached. They have also queried the valuation arguments in relation to Minister's policy relating

to demolition of listed buildings. The SGPEs also questions the instructions given to Montagu Evans, which is largely to review information, often economic, provided by the Council, DHP and their advisors GVA Grimley, rather than complete an independent review. As a result neither believe that the policy test relating to demolition has been satisfied.

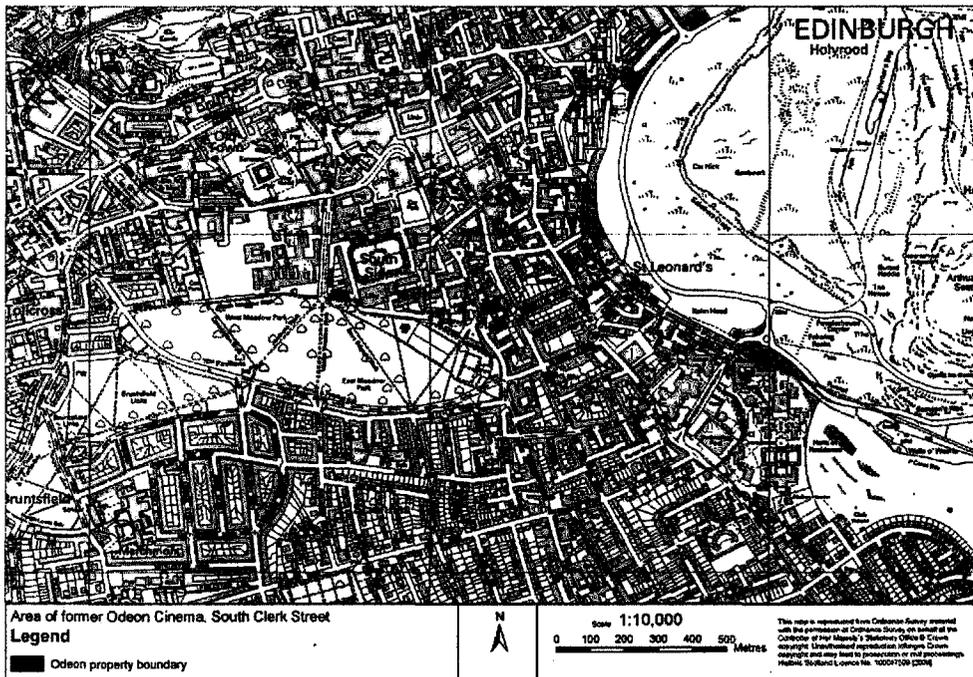
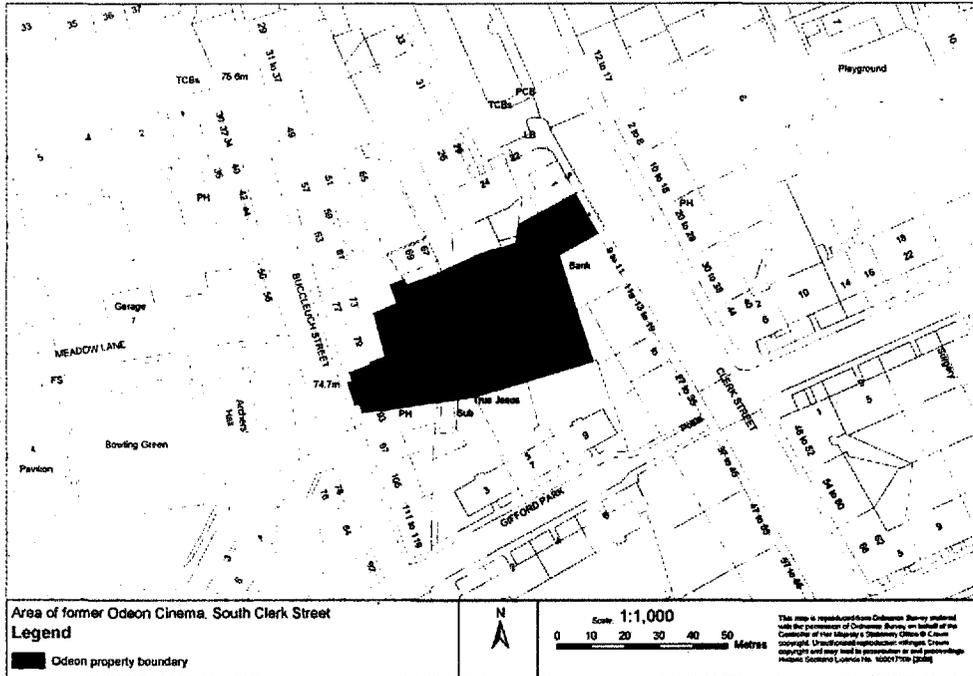
54. Significant concerns are also raised regarding the lack of reasoned consideration of the 2007 offer from the Rock Elim Church. The Elim Church have been interested in acquiring the building since 2004. Although their 2007 bid of £1.8M was supported by an independent valuation and financial accounts it seems to have been discounted on price alone, which is not the sole consideration within the planning policy framework.
55. These reservations concerning the price being asked for the building and the analysis of offers received make us less confident that the existence of a restoring purchaser has been ruled out.
56. We are also aware that the Rock Elim Church Trust remain interested in the property, and the New Victoria organization have also indicated an intention to bring forward a business plan for the building but this has, as yet, not been forthcoming. However, it seems possible, judging by the past refusal of significant offers for the building, that the financial expectations of the owner may also limit the likelihood of a successful deal with a restoring purchaser being completed.

Conclusion

57. While the Council are content that the case for the proposed scheme has been made, our advisors have raised concerns over the valuation and decision making process and therefore whether the policy tests for demolition have been met.
58. Nonetheless, it is still possible that the current proposals represent the best opportunity for the Odeon cinema to be brought back into use, albeit it with the loss of its auditorium thereby reducing the listed building's historic and architectural merit, and the overall integrity of the building.
59. The broader economic downturn may well have further reduced the likelihood of restoring purchasers coming forward, although this may not affect an ecclesiastical use in the same way.
60. Based on the views of our consultants and the SGPEs it is our view that the applicant has not clearly demonstrated that the building is incapable of viable re-use in its current form. Indeed from the evidence presented by the applicant we consider that they have demonstrated that the building has a significant value for a range of uses and that there exist a range of parties willing to pay for the building in its current form.
61. We are therefore satisfied that the partial demolition of the building and the loss of the auditorium of the former cinema has not been justified. Scottish Ministers' policy establishes a presumption against demolition and we believe there are no

grounds to set aside that presumption. On this basis, listed building consent for the proposed demolition should, therefore, be refused.

Annex 1 Site plan



Annex 2

Photographs.

A full set of recent and archive photographs can be found on the website of the Scottish Cinemas and Theatres Project.

<http://www.scottishcinemas.org.uk/edinburgh/newvictoria/index.html>



Exterior of the Odeon



Original view of the auditorium prior to subdivision

Annex 3.

List description

HISTORIC SCOTLAND		EDINBURGH BURGH
EDINBURGH, CITY OF COUNCIL		
Information Supplementary to the Statutory List (This information has no legal significance)		STATUTORY LIST
HB Number 30028	Item Number: 2269 -	ODEON CINEMA 7 CLERK STREET
Group with Items:		
Map sheet: NT27SE	Category: B	
	Group Category:	
	Date of Listing 12-DEC-1974	
Description: W E Trent of London, 1930. Faience front of 4 doric columns in antis, plainish foyer; but containing within fine atmospheric 'Greek Theatre' interior, curved ionic vestibule, galleried auditorium, channelled wall surfaces with ionic order, niches with figures; wide pedimented proscenium with octagonal Corinthianesque columns; curved back wall with ionic collonnades at balcony level, Greek key gallery front; sky ceiling with illuminated stars.		
References: Dean of Guild		
Notes: Built as New Victoria Cinema, executed by John Herdan. Prior to alteration for cinemascope the proscenium arch had splays of six disengaged columns. An outstanding example of the work of the most famous British cinema specialists.		

Annex 4.

Draft List description

CITY OF EDINBURGH COUNCIL

**EDINBURGH BURGH
STATUTORY LIST**

Information Supplementary to the Statutory List
(This information has no legal significance)

ITEM NO

Group with Items:

CAT: A

Map Ref: NT 26205 Date of Listing: 12.12.74
72815

**7 CLERK STREET,
FORMER ODEON
CINEMA
(ORIGINALLY
CALLED THE NEW
VICTORIA CINEMA)**

W E Trent of London with John Jerdan as executant architect, 1930.

Art Deco cinema comprising 2-storey, 5-bay, faience-clad, entrance front with deeply recessed doorway under projecting canopy and Art Deco tetrastyle Doric portico in antis at 1st floor; large, gabled brick auditorium to rear.

FRONT ELEVATION: 2 shallow steps to outer lobby recessed between outer bays; 4 pairs of late 20th century glazed doors; canopy overhanging pavement. Tetrastyle Doric portico in antis at first floor with Art Deco railings between columns, projecting modillioned cornice and stepped Art Deco pediment; single windows with Art Deco glazing to outer bays; 3 arched openings with Art Deco French Doors at rear of portico.

INTERIOR: some alterations (see Notes) but majority of original Art Deco decorative scheme still intact. Entrance Foyer: largely modernised, but some ceiling plasterwork survives above false ceiling; original tartan pattern terrazzo floor tiles survive under modern carpet. Inner Stalls Lounge: original decorative scheme largely complete with Ionic half-columns flanking doors, Art Deco over-door panels, radiator covers and plaster cornices. Tea Room: original decorative scheme largely complete with coffered ceiling, plasterwork and shallow arched recesses. Auditorium: divided into 4 sections but retaining most of original features including aedicules containing statues by the sculptor Beattie, representing the Arts (some missing) set between Ionic pilasters; decorative plasterwork; parts of the proscenium and two former private boxes. Plasterwork, Art Deco glazed doors and other original fixtures survive elsewhere.

REFERENCES: Dean of Guild Drawings. *Edinburgh Evening News*, 18th August 1930 (details of opening). 'What Is The Ideal Cinema?' article (interview with architect) in *Cinema News and Property Gazette*, 3rd September 1930. CTA, *Cinemas Thematic Survey – New Victoria / Odeon Cinema* (2007).

www.scottishcinemas.org.uk/edinburgh/newvictoria [accessed 4.6.07, contains very full photographic survey, historic photos and detailed description of surviving features and alterations].

NOTES: Designed by the renowned cinema architect W E Trent and opened in 1930, as the New Victoria Cinema, this building is arguably the best surviving Art Deco cinema in Scotland with the best surviving interior. It is the only large (2000+ seats) 1930s cinema auditorium to survive in a Scottish city centre. During the 1980s the original auditorium was divided up into several smaller auditoria, and a number of other alterations have been carried out (particularly in the entrance foyer). However, this work has been done in a largely reversible manner and most of the original decorative scheme has been retained, although some parts are currently concealed behind false ceilings and other additions.

The New Victoria Cinema was initially planned under the auspices of the Provincial Cinematograph Theatres (PCT), although by the time it opened the company had been taken over by the giant Gaumont British company. PCT had been founded in 1909 with the aim of providing a diverse chain of cinemas around Britain and were an unusually early example of a chain with national aspirations. PCT cinemas had luxuriously appointed interiors, central locations and ran continuous performances. In 1925 William Edward Trent was appointed as their chief architect, a position he retained under Gaumont.

Although W E Trent had designed very few cinemas prior to his appointment by PCT, he subsequently became one of the leading cinema designers in Britain, his works including a number of architecturally distinctive and lavishly appointed *Gaumont Palace* cinemas in England. Cinemas tended to be built by local architects and therefore examples in Scotland by leading English architects are very rare. The New Victoria cinema is the best (and only large-scale) example of a custom-built PCT/Gaumont cinema in Scotland and the best and most intact example of an acclaimed English architect's work in Scotland.

The interior and exterior treatment of the cinema is unusual, marking a transitional period in the work of W E Trent, the development of the PCT/Gaumont chain and the development of cinema design more generally. The external treatment is demonstrative of the emergence of Art Deco from the Neoclassical styling that had been popular in the 1920s. This is also evident internally, especially in the auditorium, which was designed to give the impression of an open-air Greek or Pompeian (contemporary accounts disagree) amphitheatre with a temple-style pediment framing the stage. This style is best described as semi-atmospheric.

Atmospheric cinemas were designed to give the audience the impression that they were sitting outside and were pioneered in America in the 1920s. The first examples in the UK were built from 1928, but they were not very common. The semi-atmospheric intention here, combined with Neoclassical and Art Deco detailing is highly unusual and was not repeated in any of the other PCT/Gaumont cinemas by Trent. The majority of other atmospheric cinemas built in Scotland have either lost their interiors or been completely demolished. Only one truly atmospheric cinema now survives in Scotland: the Campbeltown House, which has also been somewhat altered and was built on a much smaller scale than the New Victoria. No semi-atmospheric cinemas of comparable scale and style to the New Victoria survive in Britain.

Annex 5

Significance of the building

The cinema was designed for Provincial Cinematograph Theatres (PCT) in 1929 by William Edward Trent (1874-1948), with executant architect John Jerdan (1875-1947). It opened the following year as the New Victoria, by which time PCT, who specialised in luxurious cinemas in central locations, had been bought over by Gaumont. Trent, chief architect to the PCT and then the Gaumont chain, was one of the leading cinema designers in Britain.

The design of the New Victoria marked an important transitional period in cinema design from the Neo-Classical style of the 1920's to the Art Deco style of the 1930's. It is the only major surviving example of Trent's work in Scotland, and a rare work by a prominent English architect in a building form that usually relied on local firms.

The two storey façade of the cinema is an interesting mix of correct classical detailing and Art Deco styling, faced in modern white faience. It has a stepped parapet/pediment supported on four Doric columns that form an open loggia at first floor level. It has been suggested the design was specifically tailored to Edinburgh's classical tradition as Trent didn't repeat it in any other cinema. Although its height does not dominate the streetscape, it is nevertheless a prominent building, and the only use of a Hathernware faience façade in the city. Other external elevations are utilitarian.

Within the building, the entrance hall has been refaced several times, but the crush hall retains its original character as an elegant curving space to the rear of the auditorium lined with Ionic pilasters. It retains Art Deco features including the currently obscured decorative ceiling, and surviving lighting, ventilation grilles and joinery. The restaurant on the first floor retains its original Art Deco ceiling and recessed arched wall decoration that echoes the windows to the frontage balcony.

The auditorium of the New Victoria was designed as an atmospheric or semi-atmospheric cinema where the audience were given the impression of sitting outside, in this case within an open-air classical amphitheatre, described as Pompeian in contemporary descriptions. It originally had seating for over 2000 people and was constructed for both film and theatrical performances. The large pedimented proscenium (now obscured) is supported by splayed ionic pilasters, and originally had a safety curtain with view of Pompei. The surviving wall decoration contains slender Ionic pilasters with pedimented niches between, some retaining statues of the muses by the sculptor Thomas Beattie. These are placed on an unusual 'tartan' grid of plasterwork, thought to be another concession by Trent to its location.

The auditorium has seen some modification over time. It was divided to form three separate cinemas in the early 1980's and the original proscenium has been obscured with a replica. However much of the later work is reversible, and was designed to be so, and the general survival of spaces and decoration is good.

Cinemas in Scotland and the significance of the Odeon

A detailed study of the cinema was undertaken by Simpson and Brown for the owners DHP in 2007. This resulted in a detailed Conservation Plan being produced in September 2007. This plan identified the building as a rare example of an atmospheric 'super cinema' by a prominent English architect, and noted that the Hathernware faience façade was unique in Edinburgh, and rare in Scotland. The plan graded the façade and auditorium as being of considerable significance and elements of regional (Scotland) or national (Britain) importance. It recommended that the auditorium be retained, conserved and restored. The conservation plan also records the social significance of the cinema to Edinburgh, and its important role as an entertainment venue and educational and community resource.

Atmospheric theatres originated in the U.S. in the 1920's but due to their construction costs were less popular in inter-war Britain. They are now rare in Britain with only one other remaining in Scotland, the altered Category A-listed Campbeltown House. No semi-atmospheric cinemas of comparable scale and style to the New Victoria survive in Britain.

Within Scotland there are 51 listed cinemas (5 Category A, 30 Category B and 16 Category C(S)). It is therefore safe to say that the building is one of the most important historic cinemas in Scotland, and certainly the best of its type in Scotland. Its auditorium, the *raison d'être* for the building, is an important part of its interest and its loss would naturally reduce its significance.

In 2007-8 Historic Scotland undertook a thematic study of Scotland's historic cinema buildings in conjunction with the Cinema Theatre Association. The result of this saw more cinemas protected by listing, and others upgraded. Following on from this earlier this year Historic Scotland launched the 'Spotlight on Scotland's cinemas' brochure, which celebrates these distinctive buildings, constructed in a variety of engaging and exuberant styles, that add so much to Scotland's heritage and townscape.

